GEORGIA-PACIFIC CORP.

IBLA 94-377 Decided December 31, 1996

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring the GPMS 16 through 31 mill sites (NMC 529916 through NMC 529931) null and void ab initio.

Affirmed.

1. Mill sites: Generally--Mining Claims: Lands Subject to--Mining Claims: Mill sites--Mining Claims: Withdrawn Land--Segregation--Withdrawals and Reservations: Generally--Withdrawals and Reservations: Effect of

   Mill sites which are located when the land is segregated from all forms of location by a notice published in the Federal Register are valid only if they continue title to valid claims that were existing when the land was segregated from location.

2. Mill sites: Generally--Mining Claims: Lands Subject to--Mining Claims: Mill sites--Mining Claims: Relocation--Mining Claims: Withdrawn Land--Segregation--Withdrawals and Reservations: Generally--Withdrawals and Reservations: Effect of

   If a mill site is located after segregation of land covered by a placer claim, the mill site is null and void ab initio. If the placer claim was valid, the mill site is invalid because it occupies mineral land. If the mill site occupies nonmineral land, the placer claim was invalid for lack of a discovery. A mill site cannot amend an invalid placer claim, and a mill site on land occupied by a valid placer claim is invalid by reason of having been located on land which is mineral in character.

3. Estoppel

   BLM may be deemed to know the facts contained in its records but cannot be held responsible for a conclusion the owner of a mining claim draws from BLM acceptance of documents the owner is required by law to file. BLM does not have an affirmative duty to review the status of a mill site or inform a locator that a mill site location is null and void ab initio. The fact that BLM

> does not notify a locator that a mill site is not valid does not prevent BLM from declaring the mill site null and void ab initio at a later date. Justifiable reliance must be based upon affirmative misconduct, such as misrepresentation or concealment of material facts, or a misstatement in an official written decision. A party is not ignorant of the "true facts" when notice of segregation of land has been published in the Federal Register, and estoppel does not lie when the effect would be to grant a right not authorized by law.

APPEARANCES: Kirk R. Harrison, Esq., William L. Coulthard, Esq., Las Vegas, Nevada, for the Georgia-Pacific Corporation.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

The Georgia-Pacific Corporation (Georgia-Pacific) has appealed a February 25, 1994, decision by the Nevada State Office, Bureau of Land Management (BLM), declaring the GPMS 16 through 31 mill sites (NMC 529916 through NMC 529931) null and void ab initio because they had been located on land segregated from all forms of location by a notice of a proposed withdrawal published in the Federal Register. 1/

The mill sites, located on November 28, 1988, cover a portion of secs. 34 and 35, T. 18 S., R. 63 E., Mount Diablo Meridian, Nevada. 2/ As the basis for its determination, BLM relies upon a Federal Register notice that 21,000 acres of land (including secs. 34 and 35) had been closed to all forms of appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal laws for a period of 2 years from the date of publication. 53 FR 44243 (Nov. 2, 1988). The stated purpose of the closure was "to protect the land pending legislation to authorize conveyance of the land to Clark County for an industrial park." 3/ Id. Under regulations then in effect, publication

---

1/ BLM also notified Georgia-Pacific that it would take no further action on patent application N-57796, which includes the mill sites declared null and void ab initio.

2/ Amended location certificates identify Dec. 14, 1988, as the date of location.

3/ The Apex Project, Nevada Land Transfer and Authorization Act of 1989 (the Apex Act) was enacted July 31, 1989. P.L. 101-67, 103 Stat. 168 (1989). Among other things, the Apex Act withdrew lands within the "Apex Site" and authorized the transfer of at least 3,700 acres to Clark County, Nevada. The Apex Act identifies the Apex Site by reference to a map which is not printed with the legislation. BLM's decision states that the "[s]ubject lands were further withdrawn" and Georgia-Pacific frames many of its arguments in terms of the withdrawal. Although it appears that the lands on which the mill sites were located were included in the withdrawal, BLM's decision rests upon the notice of segregation published

of notice of the withdrawal application "segregate[d] the lands described in the application or proposal from settlement, sale, location or entry under the public land laws, including the mining laws, to the extent specified in the notice, for 2 years from the date of publication of the notice * * *." 43 CFR 2310.2(a) (1988).

Georgia-Pacific acknowledges that its mill sites were located after the Federal Register notice was published, but presents six arguments as to why BLM's decision should be reversed. The first three are based upon its declaration that Georgia-Pacific had located the Glenn #1 through #12 placer claims (NMC 364876 through NMC 364887) on land adjacent to and surrounding its gypsum plant, on February 6, 1986, and that on August 13, 1986, it located the Glenn #14 placer mining claim (NMC 382458) in the same area (Statement of Reasons (SOR) at 2). Georgia-Pacific asserts:

> Importantly, mill sites GPMS 18 through GPMS 31 (NMC 529918 through NMC 529931) are located within the boundaries of Georgia Pacific's Glenn placer claims, Glenn 1 through Glenn 12 and Glenn 14, and the mill sites were located at a time when the Glenn placer claims were all valid existing placer claims. [Emphasis in original.]

(SOR at 5). In 1993 Georgia-Pacific allowed the Glenn placer claims to lapse (SOR at 15-16).

Georgia-Pacific argues that the withdrawal was subject to valid existing rights, and therefore the land now covered by the Glenn placer claims had not been withdrawn, and could be used for mining activities "incident to and reasonably related to its gypsum mining operations," including location of the mill sites "in conjunction with and in furtherance of the valid existing mining claims and operations of Georgia-Pacific" (SOR at 7-8). Second, Georgia-Pacific argues that "there was never a point in time prior to the location of the millsites when Georgia-Pacific allowed its placer claims to lapse, and this allowed the subject property to be engulfed by the Apex withdrawal" (SOR at 9). Third, Georgia-Pacific contends that "the location of the mill sites on valid existing claims acted as an amended location which related back in time to the date the placer claims were initially located prior to the withdrawal" (SOR at 10). 4/

---

fn. 3 (continued)
in the Federal Register prior to their location. Consequently, the Apex Act is not at issue in the appeal. Georgia-Pacific's arguments are accepted as applying equally to the Federal Register notice. Compare 43 CFR 2300.0-5(m) (1988) with 43 U.S.C. § 1702(j) (1994); 43 CFR 2300.0-5(h).

4/ Georgia-Pacific acknowledges that these arguments do not apply to the GPMS 16 and GPMS 17 mill sites because those mill sites were not located within the Glenn placer claims. See SOR at 5 n.6, at 9 n.8, and at 10 n.9.

Although the record before the Board does not include the case files for the Glenn #1 through #12 and Glenn #14 placer claims, for purposes of review of the appeal we accept that the claims were located as stated by Georgia-Pacific. The factual question of whether the Glenn placer claims were supported by a discovery can be resolved only by presentation of evidence at a hearing. However, we do not deem it necessary to make a finding as to whether the placer claims were supported by a discovery on the date of withdrawal. Georgia-Pacific's arguments are deficient for other reasons, and a hearing will not be necessary.

[1] Georgia-Pacific misunderstands the segregative effect of the Federal Register notice. The company confuses the preservation of valid mining claims as valid existing rights (see 43 U.S.C. § 1701 note, § 701(h) (1994)) with the legal status of the land on which the claims are located. Assuming that the Glenn placer claims were perfected and contained a discovery, and therefore constituted valid existing rights, the land was segregated from all forms of location, including mill site locations, by notice of withdrawal published in the Federal Register. Cotter Corp., 127 IBLA 18, 20 (1993), quoting Jack Stanley, 103 IBLA 392, 394 (1988), aff'd sub nom. Ptarmigan Co. v. Dept. of the Interior, No. 90-35369 (9th Cir. May 15, 1991); Harry H. Wilson, 35 IBLA 349, 352-53 (1978); Jack Z. Boyd (On Reconsideration), 15 IBLA 174, 178, 81 I.D. 150, 152 (1974). 5/ Consequently, the GPMS mill sites can be valid only if they can be found to continue title to the Glenn placer claims.

[2] Under the mining law, the GPMS mill sites cannot be deemed extensions of the Glenn placer claims. Georgia-Pacific's arguments are based upon antithetical assertions that the Glenn placer claims were valid when the land was segregated, and that the same land is now held under valid mill sites. As noted above, a placer claim must contain sufficient valuable mineral to support a discovery. On the other hand, a mill site can only be located on nonmineral land. 30 U.S.C. § 42(b) (1994). If Georgia-Pacific is correct that the Glenn placer claims were valid, the mill sites are not valid because they are located on mineral land. Conversely, if Georgia-Pacific is correct that the mill sites occupy nonmineral land, the Glenn placer claims were invalid for lack of a discovery when the mill sites were located, Georgia-Pacific held no valid existing rights, and the GPMS mill sites were located on land which had been segregated from entry. Applying the same analysis, Georgia-Pacific's argument that the GPMS mill sites amend the Glenn placer claims is of no avail. If Georgia-Pacific had

---

5/ Georgia-Pacific relies upon Coeur D'Alene Crescent Mining Co., 53 I.D. 531 (1931) (SOR at 8). The decision allowed a mill site to be located on land withdrawn from location except for metalliferous minerals because 30 U.S.C. § 42 (1994) "is a mining law of the United States, and applies to the mining and milling of metalliferous minerals * * *." Id. at 533, 536. The decision does not control the present appeal because the Federal Register notice segregated the land "from all forms of appropriation under the public land laws, including the mining laws." 53 FR 44243 (Nov. 2, 1988).

a valid existing right by reason of owning valid placer mining claims at the time of withdrawal, either that right expired when the claim could no longer support a discovery or the mill sites were invalid because they had been located on land which was mineral in character. BLM correctly determined that the GPMS mill sites were null and void ab initio. Coeur Explorations, Inc., 100 IBLA 293 (1987); Clara Holloway Sampson, 87 IBLA 143 (1985); John C. Neill, 80 IBLA 39, 40 (1984); Philip A. Cramer, 74 IBLA 1, 3 (1983); R. Combest, 49 IBLA 56, 57 (1980); see United States v. Haskins, 59 IBLA 1, 91-93, 88 I.D. 925, 970-71 (1981), aff'd, Haskins v. Clark, Civ. No. 82-2112-CBM (C.D. Cal. Oct. 30, 1984).

Georgia-Pacific presents three other arguments. First, it contends that declaring the mill sites null and void is contrary to the intent of the Federal Land Policy and Management Act of 1976 (FLPMA), as stated at 43 U.S.C. § 1701(2) (1994), and the Apex Act (SOR at 13-14). Georgia-Pacific may be correct that its gypsum plant is the type of heavy-industry use anticipated by the Apex Act, but neither FLPMA nor the Apex Act suggests that Georgia-Pacific should be permitted to locate mill sites in the withdrawn area. 6/ To have Georgia-Pacific control the lands by location of mill site claims following withdrawal of the land, rather than having BLM and Clark County exercise control over that land, would seem contrary to the stated purpose of the Apex Act, which was to provide for "[o]rderly and appropriate development of such an industrial zone" and FLPMA's policy that BLM's land use planning be coordinated with state and local planning. P.L. 101-67, § 2(a)(4), 103 Stat. 168 (1989); 43 U.S.C. § 1701(2) (1994).

Georgia-Pacific also contends that the location of the mill sites was an authorized "discretionary use" under the Federal Register notice (SOR at 14). This argument is without merit. The provision on which Georgia-Pacific relies states: "The temporary uses which may be permitted during this segregation period are grazing and other discretionary uses which would not be incompatible with the intent of the proposed legislation." 53 FR 44243 (Nov. 2, 1988). As stated above, the purpose of the segregation and subsequent withdrawal was "to protect the land pending legislation to authorize conveyance of the land to Clark County for an industrial park." Valid mill site locations would afford Georgia-Pacific the means to obtain patent to the lands, precluding their conveyance to Clark County. Location of mill sites cannot be deemed to be either a temporary or discretionary use.

6/ There are two types of mill site claims--independent mill sites located for a quartz mill or reduction works and dependent mill sites used or occupied in connection with a lode or placer mining claim for mining or milling purposes. 30 U.S.C. § 42(a) (1994); see 1 American Law of Mining § 32.06[3] (2d ed. 1994). Georgia-Pacific does not describe the GPMS 16 through 31 mill sites as either type, but states that they are "associated with" and used "in conjunction with" its gypsum plant (SOR at 4, 5 n.5, 7, 14). The amended notices of location for the mill sites suggest they are held in connection with Georgia-Pacific's Glendale lode claims.

Finally, Georgia-Pacific argues that BLM should be estopped from declaring the mill sites null and void ab initio. It contends that its "decision not to file its annual assessment on the placer claims was made in reliance upon the belief that mill site claims GPMS 16 through 31 were valid" when BLM took no action for a period of 5 years (SOR at 16).

This Board has adopted the elements of estoppel described by the Ninth Circuit Court of Appeals in United States v. Georgia-Pacific Co., 421 F.2d 92 (9th Cir. 1970):

> Four elements must be present to establish the defense of estoppel: (1) The party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts; and (4) he must rely on the former's conduct to his injury.

Id. at 96. Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd, A88-467 (D. Alaska Mar. 30, 1990), aff'd, sub nom. Bolt v. United States, 994 F.2d 603 (9th Cir. 1991). See Dean Staton, 136 IBLA 161, 163 (1996).

[3] BLM may be deemed to know the facts contained in its records but, contrary to Georgia-Pacific's assertions, cannot be held responsible for any conclusion the owner of a mining claim draws from the fact BLM has accepted documents the owner is required by law to file. See 43 CFR 3833.5(a). Whether a mill site is valid depends upon more facts than are contained in BLM's records, including whether it is used or occupied for mining or milling purposes in connection with a lode or placer mining claim or supports a quartz mill or reduction works. 30 U.S.C. § 42 (1994). 7/ BLM did not have an affirmative duty to review the status of the mill sites or inform Georgia-Pacific of their invalidity. Ptarmigan Co., supra at 118. The fact BLM did not initially notify Georgia-Pacific that the mill sites were invalid did not prevent it from later declaring them null and void ab initio. See 43 CFR 3833.5(f); Washington Prospectors Mining Association, 135 IBLA 128, 130 (1996). Georgia-Pacific's reliance would be justifiable only if it was based upon affirmative misconduct, such as misrepresentation or concealment of material facts, or a misstatement in an official written decision. Dean Staton, supra at 163-64; Ptarmigan Co., supra at 117. Moreover, Georgia Pacific could not have been ignorant of the "true facts" as the notice of segregation was published in the Federal Register. Finally, it is well established that estoppel does not lie when the effect would be to grant an individual a right not authorized by law. Dean Staton, supra at 164; Washington Prospectors Mining Association, supra at 130; Ptarmigan Co., supra at 117; see also 43 U.S.C. § 1744(d) (1994). After the notice of segregation was published, the land was unavailable for the location of mining claims as a matter of law.

7/ See note 6, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 25, 1994, decision of the Nevada State Office is affirmed. The requests for a hearing and for oral argument which were taken under advisement by order dated July 7, 1994, are denied.

_____
R. W. Mullen
Administrative Judge

I concur:

_____
John H. Kelly
Administrative Judge